

OFFICE OF THE ATTORNEY GENERAL



94-00154

JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

APR 26 1994

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 242-7300

Honorable G. William Noble
Mayor, City of Gardendale
Post Office 889
Gardendale, AL 35071

Municipalities - Private
Property - Private Work -
Streets

The city may go upon private property, with permission of the owners or by obtaining an easement, and may where the drainage problem was not caused by the property owner, expend public funds to repair or maintain that portion of the city's drainage pipe which is located upon private property but which is integral to the city's public drainage system.

Dear Mayor Noble:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

May the City of Gardendale go upon private property and expend public funds to remove and replace this drainage pipe as needed to correct any drainage problems that may exist under the circumstances described hereinabove?

FACTS AND ANALYSIS

In your request for an opinion you state that drainage pipe installed by the city in 1958 along a public right-of-way has become an integral part of the public municipal drainage system. A portion of that pipe crosses a corner of private property. That portion of the pipe which is located on the private property is in danger of collapsing because the surface has sunk in approximately six to nine inches for a distance of 40 to 50 feet. You contend that if the pipe is obstructed, drainage will back up onto the public street and onto public property upon which the civic center is located. You state that the city has no easement upon the private property.

In the Attorney General's opinion to Clarence F. Rhea, dated March 4, 1993, A.G. No. 93-00158, the Attorney General wrote that a city had the authority to enter upon private property, with permission from the owner, in order to obtain access to a portion of its sewer system which needed repair, reconstruction or cleaning. That opinion recognizes that the city has a duty to maintain its sewer system. The Attorney General has also held that a county has the authority to clean out or dig a ditch on private property where water draining off a county road was causing damage to the property if the county obtained an easement on the property. Attorney General's opinion to Mr. Gary C. Sherrer, dated September 2, 1987, A.G. No. 87-00307. The Attorney General has also held that the county may repair a drainage ditch on private property if the county has an easement on the land on which the ditch is located and the county will receive some benefit from work performed on the ditch. Attorney General's opinion to Ralph A. Meade, dated July 5, 1983, A.G. No. 83-00370.

The city may go upon private property, with permission of the owners or by obtaining an easement, and may where the drainage problem was not caused by the property owner, expend public funds to repair or maintain that portion of the city's drainage pipe which is located upon private property but which is integral to the city's public drainage system.

CONCLUSION

The city may go upon private property, with permission of the owners or by obtaining an easement, and may where the drainage problem was not caused by the property owner, expend public funds to repair or maintain that portion of the city's


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drainage pipe which is located upon private property but which is integral to the city's public drainage system.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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